

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Solid Waste Management

**AGENDA DATE:** November 16, 2004

**CONTACT PERSON/PHONE:** Ellen A. Smyth, P.E., (915) 621-6719

**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT:**

To approve a resolution for a contract through August 31, 2005.

**BACKGROUND / DISCUSSION:**

To provide public awareness campaigns and volunteer cleanup events throughout the City and to keep the community clean and healthy.

**PRIOR COUNCIL ACTION:**

A contract is submitted annually.

**AMOUNT AND SOURCE OF FUNDING:**

The total amount of the contract will be \$25,000.00 thru August 31, 2005.  
Enterprise Fund

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required)

Lisa A. Hayes **FINANCE:** (if required)

**DEPARTMENT HEAD:**

\_\_\_\_\_  
(Example: if RCA is initiated by Purchasing, client department should sign  
also)

*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign a Contract between the City of El Paso and Keep El Paso Beautiful, Inc. in the amount of \$25,000.00 whereby Keep El Paso Beautiful, Inc. agrees to perform services, including educating the community about long-term benefits of developing and maintaining a clean and healthy community for the period beginning at the execution of this contract through August 31, 2005, subject to Civil Service Commission approval.

APPROVED this 16th day of November, 2004.

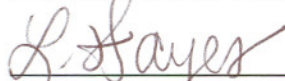
THE CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy  
Mayor


ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Lisa A. Hayes  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Ellen Smyth, P.E., Director  
Department of Solid Waste Management

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

**CONTRACT**

This Contract is entered into by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "City," and **KEEP EL PASO BEAUTIFUL, INC.**, a corporation existing under the laws of the State of Texas, hereinafter referred to as "Contractor."

**WHEREAS**, a funding has been made through the City's Solid Waste fund and administered by the City for the purpose of educating the community about the long-term benefits of developing and maintaining a clean and healthy community and to formulate strategies and coordinate projects in the achievement of a clean community; and,

**WHEREAS**, the Keep America Beautiful System is the only known scientific methodology for achieving reductions in litter and increase in community cleanliness; and,

**WHEREAS**, Keep El Paso Beautiful, Inc. also serves the public purpose of development and diversification of the economy, reduction of underemployment, and development of commerce within the City; and,

**WHEREAS**, Keep El Paso Beautiful, Inc. is an affiliate of the Keep America Beautiful System; and,

**WHEREAS**, the above-mentioned services shall be provided through the independent contractor, KEEP EL PASO BEAUTIFUL, INC.; and,

**WHEREAS**, Contractor has agreed the billable services to be provided in an amount not to exceed the value of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) to be paid in one (1) installment on December 1, 2004; and,

**WHEREAS**, the term of this Contract, hereinafter referred to as "contract period" shall be from the date this contract is executed through August 31, 2005.

**NOW, THEREFORE**, in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto do mutually agree as follows:

**WITNESSETH**

The City and Contractor hereby agree that Contractor shall provide said services with the amount of said services being provided not to exceed the total of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) during the contract period. The determination as to whether or not these services being provided by Contractor are satisfactory will be determined by the City. Contractor hereby agrees to provide any and all documentation necessary to fulfill any grant, Federal, State or City requirements pertaining thereto.



## **I. DURATION AND SCOPE**

The term of this Contract shall begin on the date this contract is executed and end on or before August 31, 2005. This Contract shall not exceed the sum certain of TWENTY FIVE THOUSAND AND NO/100TH DOLLARS (\$25,000.00), and upon the City's approval performance, shall be paid in one (1) installment on December 1, 2004.

The Scope of Services pursuant to which Contractor is performing is as described in Attachment "A" attached hereto. Compensation for said services shall be billed as described in Attachment "A."

This Contract is exclusively between the City and Contractor. Contractor hereby agrees that it shall provide to the City any and all documentation, which may be required to substantiate the billings for the services provided hereunder.

## **II. TERMINATION AND PERFORMANCE**

### **A. TERMINATION.**

Either party may terminate this Contract, by written notice to the other party, if the other is in default in a matter of serious importance to the aggrieved party. Termination shall be without prejudice to any obligation by one party to the other, which shall have accrued and be owing prior thereto. Upon termination of this Contract, the Contractor shall deliver to the City all papers, work papers, and other materials, which the City is required to have in its possession as documentation requirements for the grant or grants referred to hereinabove.

In the event that the City terminates this Contract or, in lieu of termination continues the Contract on the condition that certain breaches or defaults of said Contract are remedied within a period of reasonable time, the City shall reserve and retain the right to demand reimbursement of funds improperly allocated or spent by Contractor, attributable to any grant which provides funds for this Contract, measured by the proportion of time, service, or materials which were improperly allocated or spent divided by the total amount of the grant to which said funds are attributable.

In the event Contractor requests that City substantially amend the services to be delivered, as outlined in Attachment "A" attached hereto, then City has the right to terminate this Contract. Should City so terminate this Contract then settlement of the Contract so terminated shall be made.

### **B. PERFORMANCE.**

Level of Performance: The City shall have the right to monitor performance of this Contract on a periodic basis to assure compliance with the provisions of this Contract. The Contractor will provide assistance and information needed by the City in monitoring and evaluating the performance of the Contractor in all areas of accountability.

Reporting Requirements: The Contractor shall furnish the City a written report detailing funds utilized and programs initiated, both on-going and completed, no later than the 15th day of the month following the report due date specified in Attachment "A". Each report shall include, but not be limited to the requirements of Attachment "A".

Duplicate Sources of Funding: The City shall not be billed for any expense for which Contractor is reimbursed from any other source.

Non-Performance Clause: Specific services have been established for this Contract and are enumerated in Attachment "A." The Contractor must provide these services in accordance with the performance schedule in Attachment "A". The Contractor will be required to reimburse the City for the value of any services, which were not provided. No additional reimbursements will be granted to the Contractor for exceeding performance goals.

### **III. NOTICES AND REGULATIONS**

#### **A. NOTICES.**

All notices, communications and reports under this Contract shall be either hand-delivered or mailed, postage prepaid in the United States Postal Services, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: Mayor  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

Copy to: Ellen A. Smyth, P.E., Director  
Solid Waste Management  
7969 San Paulo Dr.  
El Paso, Texas 79907

David R. Almonte  
Director of OMB  
2 Civic Center Plaza  
El Paso, TX 79901-1196

CONTRACTOR: Katherine Palafox  
Executive Director  
Keep El Paso Beautiful, Inc.  
Drawer 140  
El Paso, Texas 79980

#### **B. REGULATIONS.**



Both parties hereto agree and recognize that all the conditions of this Contract and performance by either party are subject to change of law. As such, both parties specifically agree that any of the provisions in this Contract may be changed to bring this program or the City of El Paso into compliance with such laws, rules, and regulations. Notice of such change will be given to either party as soon as notice is received by either party of the changes in applicable laws, rules, and regulations; however, any such changes which must take effect to bring the City of El Paso or this program into compliance with such changes will take effect as soon as is needed to comply with such changes in the laws, rules, and regulations.

#### **IV. VISITS**

The City may visit the Contractor's premises at any time for the purpose of verifying that the Contractor is in compliance with the terms of this Contract. Said request by the City shall be made for the purposes of auditing, monitoring, or evaluating, as required by the terms of the grants which fund this program, or satisfying any federal, state, or City regulations which apply to this program. This provision is solely for the purpose of allowing the City to meet any rules, regulations, or policies of the City, state, or federal laws and regulations; in no way does this provision change Contractor's status as an Independent Contractor.

#### **V. INDEMNIFICATION**

**Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. but only to the extent of Contractor's negligence. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.**

#### **VI. LIABILITY INSURANCE**

Contractor agrees that it will carry general liability insurance, with an insurance company licensed by the State of Texas, in minimum amounts of \$250,000/\$500,000/\$100,000. The



Contractor further agrees that it shall file with the City Clerk a copy of such policy or policies, certifying that such insurance coverage is in effect and naming Contractor as the insured and the City of El Paso as an additional insured. Such policy shall contain a provision that it shall not be canceled without notice to the City of El Paso.

## **VII. COVENANTS**

### **A. PROHIBITED ACTS.**

Contractor covenants that during this Contract period, (1) Conflict of Interest: It will have no interest in, and shall not acquire any interest, direct or indirect, in any contract or subcontract which will conflict in any manner or degree with the performance of the services to be performed under this Contract. Contractor further understands that the Charter of the City of El Paso prohibits any officer or employee of the City from having financial interest, direct or indirect, in any contract with the City. Any violation of this paragraph, with knowledge express or implied, by the Contractor shall render this Contract voidable by the Mayor of the City of El Paso or by the El Paso Council; (2) Discrimination: No person in the United States shall, on the grounds of race, creed, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available to the Contractor pursuant to the terms of this Contract; (3) Discriminatory Criteria: Contractor may not utilize criteria or methods of administration on the basis of race, creed, color, sex or national origin, or having the effect of defeating or substantially impairing accomplishment of the objects of programs funded pursuant to this Contract with respect to individuals of a particular race, color, national origin, creed or sex; (4) No Assignment Without Consent: As stated hereinabove Contractor shall not assign, delegate, or attempt to so convey an interest in this Contract, in such event said contract shall be terminable, at the discretion of the City, without prior notice to Contractor; (5) Prohibited Interests: No member, officer, or employee of the Contractor, or its designees or agents, or members of the governing body of the City of El Paso, and no other public officials of the City of El Paso who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Contract; (6) Federal Officials: No member or Delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit to arise herefrom; and (7) Hatch Act: Neither the City funds nor any personnel which may be employed by the Contractor with these funds shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

### **B. NON-RELIGIOUS ACTIVITIES.**

The Contractor will provide the stated services in a manner that is exclusively non-religious in nature and scope. There will be no religious services, proselytizing, instruction, or any other religious influences in connection with the stated services; there will be no religious discrimination in terms of employment or benefits under the stated services; and block grant funds may only be used for the stated services and not for the construction, rehabilitation, or restoration of any facility owned by any religious organization where the services are to be provided. Handicapped



Accessibility Standards: In the performance of this Contract the Contractor will comply with the minimum guidelines and requirements for accessible design for handicapped persons as established by the Architectural and Transportation Barriers Compliance Board, detailed in 36 CFR Part 1990, and authorized by Section 502 of the Rehabilitation Act of 1973, as amended. Compliance with these rules and regulations shall be a condition of any Federal financial assistance provided to the project, and failure to fulfill these requirements shall subject the Contractor to those sanctions specified in the above rules, regulations and laws, and including but not limited to loss of project funds.

Contractor shall comply with all applicable federal, state and local laws, all City ordinances and all codes and regulations. In particular, Contractor must file the Assurance required under the City's ordinance to prohibit discrimination against disabled persons. Failure to do so in any manner, which materially impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder shall constitute a material breach of this Contract.

**C. PERSONNEL.**

The Contractor represents: (1) that it has, or will secure at its own expense, all personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City; (2) Personnel having financial management or the management of money as one of their duties and who perform services under this Contract shall be bonded by a surety acceptable to the City; (3) The Contractor shall provide the City with copies of all criteria for selection of personnel and shall maintain said criteria in a current condition.

**D. SUBCONTRACTORS.**

The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them.

**E. BUDGET.**

The Contractor shall perform its services within the limits of the budget outlined in Attachment "A" hereto. No changes shall be made in the budget line items without prior written approval of the City's Director of Office of Management and Budget, hereinafter the "Director," or his delegate. The City shall have the right to review the financial status of the project and upon determination that unexpended funds will remain, shall at its sole option adjust the Contract budget to remove such identified excess funds for reallocation to other projects at the discretion of the City.

**F. GEOGRAPHICAL LIMITS.**

The Contractor shall perform its services funded hereunder only within the geographical boundaries of the City of El Paso.



**G. AUTHORITY TO CONTRACT.**

All persons that are signatories to this Agreement represent that they have authority to enter into this Agreement and bind their respective organizations thereto.

**VIII. ENTIRE AGREEMENT**

This Contract constitutes and express the entire agreement of the parties hereto in reference to the services of the Contractor for the City and in reference to any of the matters herein provided for or herein discussed or mentioned in reference to the providing of such services, all promises, representatives, and understandings relative hereto being herein merged.

**IN WITNESS WHEREOF**, the parties have executed this Contract in the City of El Paso on this 16th day of November, 2004.


THE CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk


KEEP EL PASO BEAUTIFUL, INC.

By:   
Name Printed: Katherine Palafox  
Title: Executive Director

APPROVED AS TO FORM:

  
Lisa A. Hayes  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
Ellen A. Smyth, P.E., Director  
Department of Solid Waste Management

APPROVED BY THE CIVIL SERVICE COMMISSION:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary

**2004-2005 Contract-Attachment A  
Keep El Paso Beautiful**

<b>Program Scope Keep El Paso Beautiful</b>	<b>1st QTR Sept-Nov</b>	<b>2nd QTR Dec-Feb</b>	<b>3rd QTR Mar-May</b>	<b>4th QTR June-Aug</b>	<b>Program Requirements</b>
A) Uphold and maintain the City status with Keep El Paso Beautiful & Keep TX Beautiful		x			Provide copies of invoices of payment, certificates of status to city annually.
B) Coordinate a major public awareness campaign or event supporting Keep El Paso Beautiful, Keep America Beautiful & City of El Paso, as selected by the City in order to encompass the maximum number of possible of representative districts		x			Provide the City with the scope of the project, program, awareness campaign and proposed involvement of City Depts.
C) Assist in organizing at least one City wide public awareness and volunteer cleanup event	x	x	x	x	To be coordinated with City SWM on quarterly basis
D) Provide an ongoing education program addressing litter prevention & abatement, anti-graffiti, recycling and solid waste issues around El Paso area. Bilingual programs will be provided as an "as needed basis."	x	x	x	x	Provide program methodology concept and target audience to City & incorporate City programs of information on a quarterly basis.
E) Encourage and promote community responsibility and involvement through neighborhood clean up campaigns.	x	x	x	x	Neighborhood clean-ups require City or SWM resources must be coordinated with SWM no less than 3 working days prior to the clean-up. A list of all clean-ups, number of volunteers, and amount of trash collected is to be provided to the city SWM quarterly basis. KEPB is to maintain information on a database by Fiscal Year.
F) Continue on going outreach and awareness campaign through public speaking engagement to organizations, businesses, schools, and/or groups. Campaign is to include not less than 6 engagements per quarter, with a minimum of three (3) engagements annually held within each of the representative districts.	x	x	x	x	Conduct no less than 6 outreach and awareness campaigns per quarter within the city limits. Provide sign in log, method of presentation, and a list of promotional literature and item provided to participants to the city for each presentation conducted on a quarterly basis.



2004-2005 Contract-Attachment A  
Keep El Paso Beautiful

Program Scope Keep El Paso Beautiful	1st QTR Sept-Nov	2nd QTR Dec-Feb	3rd QTR Mar-May	4th QTR June-Aug	Program Requirements
G) Provide recognition to groups, organizations, businesses, and or schools who exemplify leadership in support of the Keep El Paso Beautiful Mission.		x		x	Provide annual recognition of groups for beautification efforts at a KEPB event. Names of groups to be recognized are to be submitted to city SWM prior to recognition.
H) Continue to establish new partnerships for various programs and assist other governmental agencies (such as, but not limited to, RGCOG, TCEQ, EPA, TDH, TxDOT) in providing education, alternatives and/or awareness.	x	x	x	x	Provide list of meetings attended and agency names and purpose of meeting on a quarterly basis.
I) Participate in public awareness events throughout El Paso such as but not limited to Texas Recycles Day and assist SWM in providing information on Environmental and Recycling events.	x	x	x	x	Provide all events in which KEPB participated and information was provided on a quarterly basis.
J) Encourage and support beautification and Improvement projects throughout El Paso.	x	x	x	x	Provide list of Beautification programs and improvement projects in which KEPB participated on a quarterly basis.
K) Any other programs or projects involving the SWM subject to approval prior to initiating the program or project.	x	x	x	x	Programs or projects involving SWM must be submitted for approval 5 days prior to event on a quarterly basis.
L) Provide recognition of SWM and other involved city entities on or during appropriate public service announcements.	x	x	x	x	Provide list of PSA announcements on quarterly basis.
M) Provide proposed Budget Document for fiscal year and update quarterly by providing summary & detailed expenditure reports by type of expense, i.e., supplies, utilities, etc, and include beginning and end balances.	x	x	x	x	Provide report to SWM on a quarterly basis.

Keep El Paso Beautiful, Inc.  
 Basic Operating Expenditures  
 Twelve Month Period Beginning October 1, 2004

		Annual
Monthly:		
Katherine Palafox wages	2,835.00	
Payroll tax	216.88	
Parking	66.00	
Office telephone	59.00	
Cell phone	130.00	
Bank service charge	7.00	
Insurance	234.00	
	<u>3,547.88</u>	42,574.53
Annual:		
Keep Texas Beautiful dues		75.00
Keep America Beautiful dues		400.00
Internet		180.00
Keep Texas Beautiful convention:		
Registration fees	189.00	
Airfare	200.00	
Hotel, 3 nights	324.00	
Miscellaneous	<u>100.00</u>	813.00
Basic operating expenditures		<u>44,042.53</u>
Grant from City of El Paso		<u>25,000.00</u>
Additional funds necessary for basic operations		<u><u>19,042.53</u></u>
Recap of basic operating expenditures:		
Executive director wages and payroll tax	36,622.53	
Phones, internet, bank charges, parking	3,324.00	
Insurance	2,808.00	
Keep Texas Beautiful convention	813.00	
Dues	<u>475.00</u>	
	<u><u>44,042.53</u></u>	